

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KIMBERLY KEYS, WF5311,

Plaintiff,

v.

LESTER McDAUGHERTY,

Defendant(s).

Case No. [17-cv-06467-CRB](#) (PR)

**ORDER OF DISMISSAL**

Plaintiff Kimberly Keys, a prisoner at Central California Women's Facility in Chowchilla, has filed a pro se complaint for damages under 42 U.S.C. § 1983 against Lester McDaugherty, a former prisoner she alleges stole monies from her. Plaintiff also seeks to proceed in forma pauperis (IFP) under 28 U.S.C. § 1915, which based solely on her affidavit of poverty, the court grants in an accompanying order.

**DISCUSSION**

A. Standard of Review

Federal courts "shall dismiss" an action brought IFP under § 1915 at any time if the court determines that the action "is frivolous or malicious," "fails to state a claim on which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). Pro se pleadings must be liberally construed, however. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

1     B.     Legal Claims


2             Plaintiff's action against defendant, a private individual, must be dismissed for failure to  
3     state a claim under § 1983 because a private individual does not act under color of state law, an  
4     essential element of a § 1983 action. See Gomez v. Toledo, 446 U.S. 635, 640 (1980). Purely  
5     private conduct, no matter how wrongful, is not covered under § 1983. See Van Ort v. Estate of  
6     Stanewich, 92 F.3d 831, 835 (9th Cir. 1996). But plaintiff may well be able to seek relief in state  
7     court for violation of California law.

8   **CONCLUSION**

9             For the foregoing reasons, plaintiff's action is DISMISSED under § 1915(e)(2) for failure  
10    to state a claim on which relief may be granted. The dismissal is without prejudice to seeking  
11    relief in state court, if appropriate.

12            **IT IS SO ORDERED.**

13    Dated: January 22, 2018

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16   CHARLES R. BREYER  
17   United States District Judge  
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